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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/349,198	07/07/1999	CHRISTOPHER F. PARKER	063170.6564	6293
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BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER COLBERT, ELLA	
			ART UNIT 3694	PAPER NUMBER
			NOTIFICATION DATE 11/28/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/349,198

Applicant(s)

PARKER, CHRISTOPHER F.

Examiner

Ella Colbert

Art Unit

3694

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 5 and 6.
Claim(s) objected to: _____.
Claim(s) rejected: 1-4 and 12-20.
Claim(s) withdrawn from consideration: _____.


AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The following arguments will be addressed in this advisory action as stated here below: Issue no. 1: Applicant Argues: Applicant respectfully disagrees that the proposed Sockut-Barry combination discloses, teaches, or suggests the database table recovery system recited in claim 1 that is operable to "apply updates to [a retrieved] backup copy from a log associated with a database table" and "restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace have been considered but are not persuasive. Response: The Supreme Court held that a suggestion was not required, the patent claim was obvious because one skilled in the art has the ability (common sense) to select elements from the prior art and combine them in a way in which each element functions as it had in the prior art. There was no new element or new function as the court interpreted the claim in KSR. It is a use of common sense by one skilled in the art to select and combine known elements with no new function, i. e., a predictable result. In rejecting the TSM test as the only test for obviousness, the court articulated the "common Sense" selection test". The common sense selection test holds that the mere selection of elements from various prior art references and combining them together with no change in their respective functions is an obvious use of common sense by one skilled in the art, and, therefore, not patentable. In determining whether the subject matter of a patent claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls. KSR 82 USPQ 2d at 1397. Also see In Re Kahn, 78 USPQ 2d 1329, 441 F. 3d 977 (Fed. Cir. 2000). Issue no. 2: Applicant argues: However, nowhere in Sockut do the cited portions disclose, teach, or suggest a database table recovery system that is operable to "restore the database table associated with the tablespace from the updated backup copy without recovering the tablespace", as recited in claim 1 and nowhere does the cited portion of Sockut disclose, teach, or suggest "apply [ing] updates to [a retrieved] backup copy from a log associated with a database table has been considered but is not persuasive. Response: Applicant is arguing the same arguments addressed in the Final Office Action and the response is maintained. Issue no. 3: Applicant argues: Sockut mentions the words "scan" or "scanning," nowhere does the cited portion appear to disclose, teach, or suggest "scanning the new table data pages for records of the first database table" and "building new table pages from the backup copy" as recited in claim 12 has been considered but is not persuasive. Response: Sockut is interpreted as teaching or suggesting "scanning the new table data pages for records of the first database table" in col. 14, line 58-col. 15, line 12 and col. 16, line 51-col. 18, line 55. Applicant argues: The proposed Sockut-Barry combination fails to disclose, teach, or suggest "reading log records associated with a first database table of the one or more database tables" and "applying the log records to the backup copy without recovering the tablespace" has been considered but is not persuasive. Response: It is interpreted that Sockut teaches these claim limitations in col. 9, lines 19-32 and col. 4, lines 22-29. Furthermore, Although the Examiner has pointed out particular references contained in the prior art(s) of record in the body of the action, the specified citations are merely representative of the teachings in the art as applied to the specific limitations within the individual claim. Since other passages and figures may apply to the claimed invention as well, it is respectfully the entire references as potentially teaching all of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the Examiner. On page 14 of the arguments in paragraph 2, the Applicant argues: For at least these reasons, Applicant respectfully submits that the proposed Reitburg-Ryan combination is improper and independent claim 1, and its dependent claims are allowable for at least this additional reason has been considered but is not persuasive. Response: The Reitburg-Ryan references were not used in the rejection of Applicant's claims. Therefore, this argument is moot. Applicant argues: the proposed Sockut-Barry combination fails to disclose, teach or suggest "wherein the first database table can be recovered without having to recover the tablespace" as recited in claim 17 has been considered but is not persuasive. Response: It is interpreted that Sockut teaches this claim limitation in col. 7, lines 18-56. Conclusion: Claims are given their broadest reasonable interpretation in light of the Specification. In re Prater, 162 USPQ 541, 550-51 (CCPA 1969). The hindsight rejection was addressed on page 10 of the Office Action of 6/9/07. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).


JELLA COLBERT
PRIMARY EXAMINER